

(33)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No 1809/1996
T.A.No.

Date of Decision 18.4.2002

Jiwdhan and ors ... Petitioner

Sh.Sunil Malhotra Advocate for the Petitioner(s)

VERSUS


UOI Ministry of Railways Respondent
through its Genl.Manager
North Eastern Railway
and ors.

Shri B.S. Jain ... Advocate for the Respondents

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri M.P.Jain, Member (J)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1809 of 1996

New Delhi, this the 18th day of April, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairmam (J)
Hon'ble Shri M.P. Singh, Member (A)

1. Jiwdhan son of Shri Ram Jatan
2. Bhagirathi son of Shri Lallan
3. Babban son of Shri Ram Kewal
4. Lachchan son of Shri Kishore
5. Brahma Deo son of Shri Indrasa
6. Jhapsi son of Shri Jadu Nath
7. Shiv Bachan son of Shri Indrasan
8. Ram Naresh Sharma son of Shri Surya Narain Sharma

9. Shankar son of Shri Bhikhari

(Applicant Nos.1 to 9 at present residing of
Khadar Dairy Farm, Madanpur, Badarpur, New
Delhi-44.)

10. Phool Deo son of Shri Bhagerathi
11. Shakur son of Md.Najar Ali
12. Vindhayachal son of Shri Shiv Pujan
13. Sadal Yadav son of Shri Chhabbu Yadav
14. Haridwar son of Shri Govind
15. Shiv Shankar son of Shri Kumar

(Applicant Nos.10 to 15 at present resident
at 1/249, Khichripur, Delhi-91.)

16. Ram Bali son of Shri Matelu,
17. Ram Chander son of Shri Ram Deo
18. Brahma Prasad son of Shri Vikaram Prasad
19. Phool Chand son of Shri Shyam Bali

(Applicant Nos.16 to 19 at present residing at
Qtr.Nos.100-101, G-Block, Manglapuri,
New Delhi.)

20. Inner Son of Shri Nandan
21. Shivan Lal son of Shri Ram Kewal
22. Ram Vilas son of Shri Ram Chandra

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23. Hari Ram Mishra son of Shri Ram Lakhan Mishra
24. Babu Lal son of Shri Ori
25. Ram Sewak son of Shri Shyam Lal
26. Param Hans son of Shri Bandhu

(Applicant Nos.20 to 26 at present residing at
G-1/245, Uttam Nagar, New Delhi.)

....Applicants

(By Advocate : Shri Sunil Malhotra)

- versus -

1. Union of India,
Ministry of Railways,
Through its General Manager,
North Eastern Railway,
Gorakhpur,
Utter Pradesh.
2. Ram Brilasha, son of Shri Raj Deo,
Resident of Village Madhuban @ Bandhwa,
P.O. Madhopur,
District-Gorakhpur,
Utter Pradesh.
3. Sudama son of Shri Jadgeo,
Resident of Village -Aciyepar,
P.O. Sanjanwa,
District-Gorakhpur,
Utter Pradesh.
4. Baldeo, Son of Shri Ram Samujh
Village - Sihapar, P.O. Sahjanwa,
District-Gorakhpur,
Utter Pradesh.
5. Ram Chander,
Son of Shri Raghunath,
Village-Bihpur, P.O. Sahjanwa,
District-Gorakhpur,
Bihar.
6. Ram Prasad Giri, son of Shri Ram
Avadh Giri,
Village-Bankatawa Babu,
P.O. Pipiganj,
District-Gorakhpur,
Utter Pradesh.
7. Ram Rakesh,
Son of Shri Paramdeo,
Villlage-Lahesara, P.O. Ghaghasara Bazar,
District-Gorakhpur,
Utter Pradesh.
8. Rajbali,
Son of Shri Muktinath,
P.O. Khorabar,
District-Gorakhpur,
Utter Pradesh.

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9. Ram Das,
Son of Shri Chokat,
Village and P.O. Baitalpur,
District-Deoria,
Utter Pradesh.
10. Brahmadeo,
Son of Shri Khedu,
Village - Mangalpur, P.O. Pipiganj,
District-Gorakhpur,
Utter Pradesh.
11. Brijraj
Son of Shri Somai,
Village - Mangolpur,
P.O. Pipiganj, District-Gorakhpur,
Utter Pradesh.
12. Ram Bachan Son of Shri Rampal
Village-Baresara, P.O. Bharsar,
District-Gorakhpur,
Utter Pradesh.Respondents

(By Advocates : Shri B.S. Jain)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J) :

In pursuance of the Hon'ble Delhi High Court's order dated 21.5.2001, we have heard Shri Sunil Malhotra, learned counsel for applicants and Shri B.S. Jain, learned counsel for respondents on merits of the OA. We have also perused the documents on records.

2. Preliminary objection was taken by Shri B.S. Jain, learned counsel for respondents that the OA is barred by ~~the~~ limitation but having regard to the aforesaid order of the Hon'ble Delhi High Court, the same is rejected in the present case. We accordingly proceed to deal with the matter on merits of the case.

3. The present application has been filed by above 26 applicants praying for a direction to ~~the~~ respondent No.1 to implement the Scheme which was circulated by

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them on 1.6.1984 in terms of the Hon'ble Supreme Court's order dated 18.4.1985 in Inderpal Yadav and Ors. Vs. Union of India & Ors. (Writ Petition Nos.147,320-69, 454, 4335-4435/83 etc.etc.). In paragraph 4 (vii) of the OA, the applicants have submitted that private respondents Nos.2 to 12, who are juniors to them, have been taken in employment w.e.f. October 1990 with all consequential benefits and they have also been allowed to join duties with effect from 1.4.1996, whereas they have been ignored. To this ~~effect~~, Shri B.S. Jain, learned counsel for respondents, has submitted that there is no doubt that ~~the~~ respondents nos.2 to 12 have been engaged by the respondents in view of the directions of the Hon'ble Supreme Court in the case of Union of India Vs. Sudama & Ors. (S.L.P. (Civil) Nos.19745-19746 of 1995 vide order dated 25.1.1996. Para 2 of the said judgement of the Hon'ble Supreme Court reads as follows:-

"Taking all facts and circumstances into consideration, we are of the opinion that it shall be appropriate to direct the appellant to take the respondents into the service with effect from October 10, 1990 i.e. from the date of the order passed by the Tribunal. They shall be entitled to consequential benefits with effect from that date including fixation of their seniority amongst the similarly situated employees. We order accordingly. We make it clear that we are not approving the observations made by the Tribunal in respect of the service records which had been produced on behalf of the appellant before the Tribunal. This order shall be complied within four weeks from today."

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4. In the light of the aforesaid order of the Hon'ble Apex Court, we agree with the submissions made by Shri B.S. Jain, learned counsel that they had no other alternative but to take the private respondents nos.2 to 12 back in service w.e.f. 1.10.1990. However, it is also relevant to note that in the reply filed by the respondents to paragraph 4 (vii) of the OA, wherein the applicants have submitted that they are senior to private respondents 2 to 12, the respondents have not denied the same. They have also submitted that as per the order dated 25.1.1996 (supra) of the Hon'ble Supreme Court, the respondents nos.2 to 12 have been reengaged w.e.f.1.4.1996. They have, however, submitted that the applicants cannot take advantage of that judgement.

5. Both the parties have relied upon the Scheme which has been prepared in pursuance of the directions of the Hon'ble Supreme Court in Inderpal Yadav's case (supra) wherein the Hon'ble Supreme Court has held as follows:-

"The scheme envisages that it would be applicable to casual labour on projects who were in service as on January, 1, 1984. The choice of this date does not command to us, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination flowing from fortuitous court's order. To illustrate, in some matters, the court granted interim stay before the workmen could be retrenched while some other were not so fortunate. These in respect of whom the court granted interim relief by stay/suspension of the order of retrenchment, they would be treated in service on 1.1.1984 while others who fail to obtain interim relief though similarly situated would be pushed down in the implementation of the Scheme. There is

another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court."

The part of the earlier Scheme has been directed to be modified by the Hon'ble Supreme Court, which reads as follows:-

"To avoid violation of Art.14, the scientific and equitable way if implementing the scheme is for the Railway administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing these with the longest service. If in the process any adjustments are necessary, the same must be done. In giving this direction, we are considerable influenced by the statutory recognition of a principle well known in industrial jurisprudence that the men with longest service shall have priority over those who have joined later on.....

.....The Scheme as would stand modified by the directions herein given forms part of this judgement and a copy of it shall be annexed to this judgement."

6. The respondents have themselves annexed the positions of the petitioners/applicants as per seniority list issued on 1.4.1985, from which we note that a number of them have completed more than 1000

days of service with respondent No.1 on that date. As mentioned above, it is also relevant to note that the respondents have not denied the averments made by the applicants that they are senior to the private respondents nos.2 to 12, even though they have no doubt engaged them in service in pursuance of the Hon'ble Supreme Court's order dated 25.1.1996.

7. Further, in the facts and circumstances of the case and having regard to the aforesaid judgement of the Hon'ble Supreme Court, we find force in the submissions made by the learned counsel for applicants that while re-engaging those private respondents, i.e., respondents nos.2 to 12, the applicants could not have been ignored. The rightful claim of the applicants that otherwise they are qualified as per the Scheme as approved by the Hon'ble Supreme Court, cannot be ignored and in any case they have longer number of working days to their credit as compared to the private respondents.

8. In the facts and circumstances of the case, we respectfully follow the Hon'ble Supreme Court's observations in Inderpal Yadav's case (supra) that merely because of the fact that the present applicants had not approached the Court due to their financial difficulty, they should not be placed at a disadvantage as compared to those who have rushed to the Court/Tribunal. In other words, if they were similarly situated they are entitled to similar treatment, which has been reiterated by the Hon'ble Supreme Court in a number of cases.


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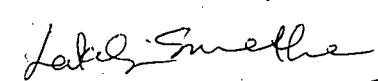
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9. According to the learned counsel for respondents, the respondents ^{do not} did not have any project work and are also not in a position to employ the casual workers. However, it is not denied that there is a Construction Wing under the Railway administration which deals with ^{the} project work.

10. In the above facts and circumstances of the case and having regard to the judgements of the Hon'ble Supreme Court, referred to above, the OA is disposed of with the following directions:-

Respondent No.1 shall get prepared the seniority list, including the applicants viz-a-viz private respondents, i.e., respondent nos.2 to 12 as expeditiously as possible and in any case within three months from the date of receipt of a copy of this order, in accordance with the aforesaid Scheme. He shall also take steps to re-engage the applicants in accordance with the seniority in and around Gorakhpur or in ^{any} other places in the State of Uttar Pradesh against any existing, suitable vacancies and, if necessary, against ^{the} future vacancies arising in ^{the} similar category, in preference to outsiders and freshers. However, in the facts and circumstances of the case, the applicants shall not be entitled to any back wages for the period they have not actually discharged any duties. No order as to costs.


(M.P. Singh)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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